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Sac and Fox Indians of Mississippi

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IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1896.—Referred to the Committee on Indian Affairs and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE SECRETARY OF THE INTERIOR, TRANSMIT-
TING STATEMENT OF ACCOUNT RELATIVE TO THE CLAIM OF
THE SAC AND FOX INDIANS OF MISSISSIPPI, NOW RESIDING
IN THE STATE OF IOWA.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1896.

SIR: I have the honor to herewith transmit a statement of the claim of the Sac and Fox Indians of the Mississippi, now residing in the State of Iowa, prepared in conformity with the provisions of the act of March 2, 1895 (28 U. S. Stat. L., 876-903).

By this statement it will be seen that the sum of \$42,893.25 is found due this band of the Sacs and Foxes of the Mississippi, payable from funds belonging to the tribe.

Besides the annuities accruing to the tribe under various treaties, there is also the sum of \$55,058.21 now to their credit in the Treasury, in cash, upon which interest at the rate of 5 per cent is annually paid to them under the provisions of the act of April 1, 1880 (21 U. S. Stat. L., 70).

As a method of settlement of the aforesaid indebtedness of the tribe to the Iowa branch one of the following plans is recommended, viz:

First. That authority be granted by Congress for this Department to pay to the Iowa Sacs and Foxes the sum of \$42,893.25 out of the aforesaid tribal fund of \$55,058.21, with accrued interest thereon from January 1, 1896, to date of payment.

Second. That the Secretary of the Treasury be authorized and directed to transfer on the books of his Department \$42,893.25 to the credit of the Iowa Sacs and Foxes, from the tribal fund of \$55,058.21, interest thereon at the rate of 5 per cent per annum to begin on January 1, 1896.

Third. That a sum not exceeding \$4,289.32 be annually retained from the proportionate share of the annuities due the Sac and Fox of the Mississippi tribe of Indians under their several treaties, the same to be paid to the Iowa branch of said tribe in addition to their proportionate share of the tribal annuities until the indebtedness of the latter against the former shall be liquidated, and that interest at the rate of 5 per cent per annum from January 1, 1896, shall be allowed on deferred payments, to be paid from the income on the invested fund (\$55,058.21) of the tribe now in the Treasury.

Of these three plans I recommend the adoption of the second one as being just to both parties.

In accordance with the requirements of the aforesaid act of March 2, 1895, directing that full opportunity to be heard be given to all parties interested, notice was given to the memorialists, through their attorney, of the finding in their behalf, and also to the Oklahoma branch of the tribe of the finding against them.

The attorney for the former filed protest in behalf of the memorialists, the objections to said finding being set out in the inclosed copy of a communication from Messrs. J. M. Vale and R. V. Belt, dated February 6, 1896.

A copy of Department answer thereto, dated the 12th instant, confirming the finding, is also herewith inclosed.

The Oklahoma Sacs and Foxes, through their delegates Mah ko sha toe and Moses Keokuk, also filed protest against the said finding, but have since, orally, through the delegates named, now in this city, withdrawn their objections to the aforesaid "Statement of account."

Very respectfully,

HOKE SMITH, *Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
Washington, January 30, 1896.

SIR: I herewith hand you, as attorney for that branch of the Sac and Fox of the Mississippi tribe of Indians, residing in the State of Iowa, a copy of an account prepared in the Department, in conformity with the provisions of the act of March 2, 1895, of their claims for their shares of the tribal annuities under the several treaties with the tribe.

Notice of this accounting has been given to the Oklahoma branch of the tribe, and they have been requested to file their objections thereto, if any, within a reasonable time.

Very respectfully,

HOKE SMITH, *Secretary.*

Mr. J. M. VALE,
Atlantic Building, City.

Statement of account, prepared in the office of the Secretary of the Interior, in conformity with the following provision contained in the Indian appropriation bill for the fiscal year ending June 30, 1896 (act of March 2, 1895, 28 Stat. L., 876-903), to wit:

That the Secretary of the Interior be, and he is hereby, directed to examine the claim of the Sac and Fox Indians of Mississippi, now residing in the State of Iowa, as set forth in their memorial presented to Congress (Senate Miscellaneous Document Numbered Forty-eight, Fifty-third Congress, third session), for the payment of annuities and other sums from the tribal funds of said Sac and Fox Indians of Mississippi and any and all claims of that portion of the tribe residing in Iowa, and to ascertain whether, under any treaties or acts of Congress, any amount is justly due them as a portion of said tribe from those of said tribe now in Oklahoma by reason of any unequal distribution of tribal annuities, land funds, or funds from other sources; and if so, how much, giving full opportunity to all parties in interest to be heard, and to report his conclusions to Congress at the next assembling thereof.

The claims of the Iowa branch of the Sacs and Foxes, as set out and described in the above-named Senate document, consist of the following items, viz:

FIRST CLAIM.—"For their proportionate shares of the tribal annuities from 1853 to 1866, both inclusive," amounting to \$143,745.80.

Specification.—"From the time of the return to Iowa of that portion of the Sac and Fox Indians of Mississippi now residing in that State, 'twelve or fifteen years'

prior to 1867, they received no portion of the tribal annuities and no aid or support from the United States. They were not during that time, have not since been, and are not now supported by the United States, but support themselves with the aid of the portion of the tribal annuities received since the year 1867. Prior to 1867 those of the tribe residing in the State of Kansas received the whole of the tribal annuities. The aggregate of the payments made during that period, say, from 1853 to 1866, both inclusive," is \$859,835.42.

SECOND CLAIM.—"For their just proportionate shares of the tribal annuities for the period from 1867 to 1894, both inclusive, allowing them for said period their proportionate share of the \$5,000 for support of manual-labor school, of the \$5,000 for national government of the tribe, and of the amount used for physicians and medicines the amount of this item of their claim will be about \$157,183.45."

Specification.—"For the period from 1867 to 1894, both inclusive, twenty-eight years, the tribal annuities have aggregated the sum of \$1,428,000. Of that sum those of the tribe residing in the State of Iowa have received * * * in cash annuity payments and in expenditures made for their benefit the total sum of \$354,508.76. During the same period those in Kansas, subsequently removed to Oklahoma, have received in cash annuity payments and in expenditures for their benefit \$1,063,491.24.

"During said period, from 1867 to 1894, both inclusive, the aggregate per capita payments made to those in Kansas, afterwards removed to Oklahoma, is 21,265 (taking the number for 1866 for the number of 1867, no number being given for the latter year), and to those in Iowa is 11,875, an aggregate of 33,140 per capita payments. The aggregate of the annuities for that period is \$1,428,000, of which those in Iowa should have received $\frac{11,875}{33,140}$, equal to \$511,692.21; whereas during said period they have only received \$354,508.76, showing a difference against them of \$157,183.45."

THIRD CLAIM.—"That there is justly due them from the appropriation of \$147,393.32 for land ceded by the treaty of 1867 at least \$50,302.84, with interest thereon at 5 per cent from 1873, amounting to \$57,848.27, and that there should be a readjustment of the interest payments on the balance remaining of said ceded land appropriation consequent upon the allowance and payment of this last item of their claim."

Specification.—"By the treaty of 1867 all the lands of the reservation in Kansas not ceded by the treaty of 1859 were ceded to the United States for the sum of \$147,393.32." Of said sum, \$92,335.21 "went to the use and benefit of those members of the tribe then residing in the State of Kansas, whose removal to a reservation where they now reside in Oklahoma was provided for in the treaty of 1867"—equal to a per capita of \$172.57. "On this basis those of the tribe residing in Iowa should have received \$50,302.84," still leaving a balance remaining of the above-named fund of \$4,755.27, subject to distribution between all the members of the tribe—both those residing in Oklahoma and in Iowa.

There are other specifications set out in the memorial which might be classed as "general," which will be taken up and referred to later.

The specific claims of the Iowa branch for their share of the tribal annuities and of proceeds of lands sold arise under the following treaties and acts of Congress, viz:

Treaty of 1804.—By the third article of this treaty (7 Stat. L., p. 84) goods "suited to their circumstances," guaranteed to them by article 14 of the treaty of January 9, 1789 (7 Stat. L., p. 28), to the value of \$1,000, were to be furnished yearly to the Sacs and Foxes, in consideration of the cession and relinquishment of certain lands described in the second article of the treaty.

Treaty of 1837.—By section 9 of article 2 of the treaty of October 21, 1837 (7 Stat. L., p. 540), the United States guaranteed to the Sacs and Foxes an annual income of not less than 5 per cent on the sum of \$200,000 "to be paid to them each year, in the manner annuities are paid," in consideration of the cession of certain lands provided for in the first article of the treaty.

Treaty of 1842.—Article 2 of this treaty (7 Stat. L., p. 596) guaranteed the Indians an annual "interest of 5 per cent on \$800,000," in part consideration for lands ceded by the first article of the treaty.

Treaty of 1859.—The sale of certain surplus lands described in articles 1, 2, and 3 is provided for in article 4 of the treaty of October 1, 1859 (15 Stat. L., 467), the proceeds thereof to be used in the payment of certain debts of the tribe. (See article 5.)

Treaty of 1867.—By article 3 of the treaty of February 18, 1867 (15 Stat. L., 495), the United States agreed to pay the Sacs and Foxes at the rate of \$1 per acre for the whole tract of land ceded by articles 1 and 2 of the treaty, said land being subsequently ascertained to contain 147,393.32 acres.

Act of April 10, 1869.—By this act (16 Stat. L., 35) Congress appropriated the sum of \$147,393.32, being at the rate of \$1 per acre, to pay for the lands above mentioned.

Annuities.—The tribal annuities aggregate \$51,000 per annum, and arise as follows, as per treaties noted above, viz:

Article 3, treaty of 1804.....	\$1,000
Article 2, treaty of 1837.....	10,000
Article 2, treaty of 1842.....	40,000
Total	51,000

Besides their share of these funds, the Iowa branch claim their share of the \$147,393.32 appropriated by the act of April 10, 1869, in payment for lands ceded under the treaty of 1867.

The basis for the foregoing claims of the Iowa branch of the Sacs and Foxes grew out of the removal of the tribe from Iowa to Kansas, under the provisions of the treaty of 1842.

By article 1 of that treaty the tribe ceded to the United States all their "lands west of the Mississippi River to which they have any claim or title, or in which they have any interest whatever," reserving the right to occupy for the term of three years from the time of signing the treaty a certain described portion of the lands ceded, the Government agreeing to assign a tract suitable and convenient, as soon after the ratification of the treaty as convenient, for a permanent and perpetual residence for them and their descendants, "which tract of land shall be upon the Missouri River or some of its waters."

The removal provided for in the aforesaid treaty was effected within the time prescribed therein, Governor John Chambers, of Iowa, ex officio superintendent of Indian affairs of the Iowa superintendency, under date of September 28, 1845, saying:

The time stipulated by the treaty of October, 1842, with the Sacs and Foxes for their removal from the lands ceded by them to the United States will expire on the 11th of next month, and already a part of the Sacs, led by their energetic and talented chief, Keokuk, are on their way to the lands west of the Missouri. (Report of the Commissioner of Indian Affairs for 1845, p. 481.)

In a report to the Commissioner of Indian Affairs, dated September 1, 1846, United States Indian Agent John Beach, in charge of the Sac and Fox Agency, says:

With the exception of about 100, in which number were many sick and infirm, the Sacs and Foxes passed out of their former country within the period prescribed by treaty. They, however, did not all continue their emigrating march with equal perseverance. Different influences—some extraneous and improper, others originating with themselves, and less avoidable—created delays. * * * By the commencement of the current year the entire tribe of Sacs, with about one-fifth of the Foxes, had concentrated upon the Kansas River, there awaiting the arrival of the remainder. * * *

The band of Foxes which is yet behind, in passing through the country of the Potawatomes, was induced to make a halt there. I am told that they were invited to stop by the chiefs of that people. * * * But it is presumed that the entire people will congregate here by the period for the annuity payment of the present year. (Report of the Commissioner of Indian Affairs for 1846, pp. 298, 299.)

Excepting a few sick and infirm members of the tribe, and perhaps some who, from choice or other causes, loitered on the way, as in the case of those referred to by Agent Beach, it must be assumed that the

whole tribe had reached and were located upon their new lands within a reasonable period after the aforesaid report of Agent Beach.

As confirmatory of this, the same agent, in a report to the Commissioner of Indian Affairs, dated September 1, 1847, says that "within the past twelve months the Sacs and Foxes have become settled upon the tract of land assigned them under the treaty of 1842." (Report of Commissioner of Indian Affairs for 1847, p. 845.)

In their memorial to Congress (Senate Mis. Doc., No. 48, Fifty-third Congress, third session, p. 1) the claimants say:

That the tribe of Sac and Fox Indians of the Mississippi formerly resided upon land now within the State of Iowa; that by the treaty of 1842 "all the lands west of the Mississippi River to which they have any claim or title, or in which they have any interest whatever," were ceded to the United States, they receiving, as part consideration for said cession, a reservation in what is now the State of Kansas, to which they removed.

The locality of the said new reservation in Kansas proving to be not so healthful, and becoming for this and other reasons dissatisfied with the change, a portion of the tribe returned to the State of Iowa prior to the year 1855.

In his report of September 1, 1845, made from the agency in Iowa, Capt. John Beach, Indian agent, says in relation to the location in Iowa:

I will conclude by observing that we were unfortunate in the choice of our present location. I doubt if there can be a more unhealthy point within the Territory of Iowa than the site of this agency and vicinity. In common with nearly all the residents, civil and military, of the place, I, with my family, have suffered severely from diseases of a malarious origin during the past and present summer. Since September 1, 1844, seventy-nine Indians have died. (Report of the Commissioner of Indian Affairs for 1845, p. 483.)

In his report of a year later, made from the new agency in Kansas, the same officer says:

The climate appears pleasant. We have heard no other than a very sickly character ascribed to it; but thus far, at least, notwithstanding a long duration of excessive heat, our exposed situation, and unacclimated habits, our apprehensions have proved entirely unfounded. (Report of the Commissioner of Indian Affairs for 1846, pp. 298, 299.)

The records of the Indian Office show that a part of the memorialists returned to Iowa about the year 1855 (Indian Office files, Sac and Fox, G. 5, 1863), after having remained with the tribe in Kansas for a period of about ten years.

At the date of the treaty of 1842 the tribe resided in Iowa, but by that treaty their lands in that Territory were ceded to the United States, and other lands in lieu thereof were accepted in what is now the State of Kansas. The tribe was moved to their new reservation, in conformity with the terms of the treaty, but in the winter of 1854 and 1855 a portion of the tribe, constituting the pioneers of this small band, other small parties following in each of the years from 1862 to 1866, inclusive, returned to Iowa, and thereafter purchased lands upon which they now reside and where they are known as the Sacs and Foxes of Iowa. Their abandonment of the reservation provided for them in Kansas and taking up their residence in Iowa was without the consent of the United States.

In their first claim they ask for annuities from 1853 to 1867.

The evidence presented by the memorialists and the record show that no part of this band reached Iowa on their return until about the winter of 1854 and 1855.

The record shows further that the pioneers of the band received their last annuities with the reservation Indians at the agency in Kansas in the latter part of 1854.

These were not upon the reservation after that date. They had abandoned it, and, so far as the record or evidence shows, never claimed, during the years named, any annuities that were paid out to the Sacs and Foxes upon the said reservation.

Article 7 of the treaty of October 1, 1859, provided as follows, viz:

The Sacs and Foxes of the Mississippi, parties to this agreement, are anxious that all the members of their tribe shall participate in the advantages herein provided for respecting their improvement and civilization, and to that end to induce all that are now separated to rejoin and reunite with them. It is therefore agreed that, as soon as practicable, the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have them notified of this agreement and its advantages, and to induce them to come in and unite with their brothers; and to enable them to do so, and to sustain themselves for a reasonable time thereafter, such assistance shall be provided for them at the expense of the tribe as may be actually necessary for that purpose: *Provided, however*, That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty shall not be entitled to the benefit of any of its stipulations. (15 Stat. L., p. 469.)

Those who left the reservation in 1862 and later years were upon the reservation at the date of and were parties to the treaty of 1859, and were not less bound by its terms than were those who left the reservation in 1854, who were also excluded from the benefits of that treaty in failing to return to the reservation "within one year from the date of ratification of this treaty," July 9, 1860.

It is doubtless a fact also that these later migrants, as did the pioneers of this band, received their annuities and all other treaty benefits up to the dates of their departure from the reservation.

In their second claim they ask for their share of the annuities from 1867 to 1894, including the \$5,000 set apart for support of a manual labor school, \$5,000 set apart for support of national tribal government, and \$1,500 set apart for pay of a physician and for purchase of medicines.

By act of Congress approved March 2, 1867, it was provided—

That the band of Sacs and Foxes of the Mississippi, now in Tamar (Tama) County, Iowa, shall be paid pro rata according to their numbers, of the annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State. (14 Stat. L., p. 507.)

A treaty made between the United States and the Sac and Fox Indians, February 18, 1867, ratified October 14, 1868, for the removal of the Indians from the reservation in Kansas to a reservation in the Indian Territory, recognized the rights of the Sacs and Foxes of Iowa to share in the tribal annuities. (15 Stat. L., p. 495.)

The first payment to the Iowa branch was made early in the year 1867, the proportion of said annuities paid to them being \$11,174.66, payments to them at that rate being continued up to and including the fiscal year 1884.

In 1884 Congress provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, subject to provisions of treaties with said tribes; but this shall apply only to the Sacs and Foxes now in Iowa: *And provided further*, That this shall apply only to original Sacs and Foxes now in Iowa, to be ascertained by the Secretary of the Interior. (Act of July 4, 1884, 23 Stat. L., p. 85.)

Pursuant to this requirement of Congress, a census was taken, and it was ascertained that there were at that time 317 original Sac and Fox Indians residing in Iowa. From that date, including the fiscal year 1885, these Indians have been paid upon the basis of the number stated, the payment amounting to about \$15,220 annually, except in two years, when they were paid a larger sum.

In their memorial these Indians complain that from 1867 to 1894 they were not paid the per capita amount which they were entitled to receive under the act of Congress of March 2, 1867 (before named), and under the treaty of 1867.

By an act of May 17, 1882, Congress provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them from appropriations for fulfilling the stipulations of said treaties no greater sum thereof than that heretofore set apart for them. (22 Stat. L., p. 78.)

Thus it will be seen that from 1882 to 1885 there could not be paid to the Iowa Sacs and Foxes any greater sum annually than they had received annually prior to that time. It seems also that this act of Congress is legislative approval as to the manner in which the fund had been distributed prior to its date.

The memorialists also set up the claim that the \$10,000 which the treaty of 1867 provides shall be set apart for the maintaining of a manual labor school and for the support of tribal government should not affect their shares of the annuities. That is to say, that the aggregate annuities, to-wit, \$51,000, should be divided pro rata among the Sacs and Foxes of Iowa, as well as the Sacs and Foxes of Oklahoma, without any deduction on account of maintaining schools and the tribal government of the last-named branch.

An exception has been noted in the amount of the annual payments since the census taken under the act of 1884.

This exception was in the fiscal years 1885 and 1886, in each of which the sum of \$19,020 was apportioned and paid to them—this sum being based upon the amount of the aggregate annuities, \$51,000.

Subsequent to these payments, the Oklahoma Sacs and Foxes protested against the method of calculation adopted by the Indian Office, claiming that the \$10,000 set apart by the ninth article of the treaty of 1867 for manual labor school and for support of tribal government should be deducted before a division of the annuities between the two branches.

Upon appeal to the Department this protest was sustained by Secretary Lamar, in a letter addressed to the Commissioner of Indian Affairs, on June 1, 1886, as follows, viz:

Referring to your letter of March 27, 1886, relative to the distribution of the treaty funds of the Sac and Fox tribe of Indians of the Mississippi, and to the indorsement of this Department of April 5, 1886, thereon, inclosing for your information an opinion on the subject by the Assistant Attorney-General for this Department, holding that "the Office of Indian Affairs would not be required to deduct the sum of \$11,500, nor any part of said sum, from the total amount appropriated for said Indians before a calculation is made for the distribution of said money per capita among the Indians located in the State of Iowa and the Indian Territory," Moses Keokuk, chief of the Sac and Fox tribe of Indians of the Mississippi in the Indian Territory, on April 26 filed in this Department an appeal from the foregoing conclusion on the case, and urged that the sum of \$5,000 for support of schools, and the further sum of \$5,000 for support of their national government, required by their treaty to be set apart annually from the income of their funds for the purposes named, together with the sum of \$1,500 for medicines and pay of physician required by the acts of appropriation to be used for that purpose from the income of the fund, making in all a total of \$11,500, should be deducted from the total amount of their income, \$51,000, before the per capita distribution is made.

I have given the matter further consideration and have looked more carefully into the provisions of the treaty with these Indians of February 18, 1868 (15 Stat. L., 495), on the subject. In the 9th article of that treaty it is provided that "in order to promote the civilization of the tribe one section of land convenient to the residence of the agent shall * * * be set apart for a manual-labor school; and there shall also be set apart, *from the money to be paid to the tribe under this treaty*, the sum of \$10,000 for the erection of the necessary school buildings and dwelling for teacher, and the annual amount of \$5,000 *shall be set apart from the income of their funds* * * * for the support of the school; and after the settlement of the tribe

upon their new reservation the sum of \$5,000 of the income of their funds may be annually used, under the direction of the chiefs, in the support of their national government. * * *"

Article 21 of said treaty provides that " * * * no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, *except those residing in the State of Iowa*; * * *"

The Sac and Fox Indians of the Mississippi, one of the parties to this treaty, include at present the three classes, viz: (1) Those now living on the reservation. (2) Those living in Kansas. (3) Those living in the State of Iowa. The treaty was made with the tribe, and all of the several bands or classes composing the tribe are bound by its provisions. As shown above, it is provided in that treaty that the sums specified should be *set apart from the money to be paid to the tribe under the treaty*.

The object of both parties to the treaty was to *promote the civilization of the tribe*, and hence it was agreed that from the common fund should be paid the sums of money agreed on for the accomplishment of that object.

At the date of the treaty none of those Indians were on the reservation provided for by that treaty. It was not stipulated that said sums should be set apart from the pro rata share of those who might move on the reservation, but that it should be *set apart from the money to be paid to the tribe under the treaty*. If, therefore, that sum of money is \$51,000, and it is stipulated that from such income a specific sum should be set apart for purposes common to all who might elect to accept its benefits it is clear that the sum remaining for *pro rata* distribution would be the difference between \$51,000 and the specific charge agreed to be deducted therefrom.

The twenty-first article of said treaty does not militate against this view, but confirms it. It was desired that all the tribe should participate in all the advantages to be derived from the investment of their funds, sale of lands, etc., by joining their brethren on the reservation. In aid of this it was provided that no part of the fund should be paid to any band or parts of bands who do not reside on the reservation, *except those residing in the State of Iowa*.

To what extent, then, are the Sacs and Foxes living in the State of Iowa excepted from the obligation of the treaty? Simply this: Their right to remain in Iowa is recognized, without forfeiting their right to share in the common fund. No bands or parts of bands who do not reside on the reservation shall be paid any part of said fund, *except those living in the State of Iowa*. This is the sole exception in their favor; but they are equally bound by the treaty stipulation, providing that from the common fund shall be deducted the amounts specified for the support of the school and the National Government. If it was not intended that the sum so provided to be set apart annually from the income of their funds should be deducted from the common fund before distribution, why not have said that there shall be apportioned among the Sacs and Foxes of the Mississippi their proportion of the amount appropriated by this act, and from the amount so apportioned and due to the Sacs and Foxes living on the reservation there shall be set apart the sum of \$5,000 for the support of the school and \$5,000 for the support of the Government? But if there is any question as to the construction of this treaty in reference to the proper disposition of this fund, the act of 1885 (23 Stat. L., 373) making appropriation for the Sacs and Foxes of the Mississippi removes all doubt. That act appropriates \$51,000 for the said Indians, and provides that the sum of \$1,500 shall be used for pay of a physician and medicine for the use of said Indians. It also provides that "hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, subject to provision of treaties with said tribes; * * * that this shall apply only to the (original) Sacs and Foxes now in Iowa * * *"

What are the provisions of the treaty to which their apportionment is subject? Clearly, the specific charge of \$10,000 which by the treaty was provided to be *set apart from the income of their funds*. A careful examination of the treaty fails to show that the income to be paid annually to these Indians is subject to any other provision. I think it therefore plain that the sum of \$10,000 should be deducted from the \$51,000 appropriated before the per capita distribution is made to the several bands.

In reference to the sum of \$1,500, appropriated for the pay of a physician and medicine for said Indians, article 10 of said treaty provides that "The United States agree to pay annually, for five years, * * *" the sum of \$1,500 for said purpose.

This limit of five years has long since expired, and therefore the treaty obligation of the Government to the Indians for that purpose has ceased; but as the necessity for a physician and for medicine for the Indians still exists, Congress has deemed it proper to require that these necessities shall be provided for out of the income of the tribe. The provision of the law of May 15, 1886, on this subject is as follows:

"For interest on eight hundred thousand dollars, at five per centum, per second

article of treaty of October eleventh, eighteen hundred and forty-two, forty thousand dollars: *Provided*, That the sum of one thousand five hundred dollars of this amount shall be used for the pay of a physician and for purchase of medicine; * * *."

From what "amount" is this sum to be taken? The law says from "this amount"—"forty thousand dollars." It is therefore clearly made a charge against that sum, and it should be deducted therefrom before any per capita distribution of the fund is made to the Indians of the several bands of the tribe.

You will be governed by this letter in your action regarding the several matters herein considered.

This matter was properly disposed of by Secretary Lamar. (Opinion of Assistant Attorney-General Hall, Int. Dept., Dec. 23, 1895.)

The memorialists also claim that the \$1,500 which Congress has provided annually since 1875, with one or two exceptions, should be set apart for the payment of a physician and the purchase of medicine should not be deducted from the annuities before the division of the pro rata shares of the Iowa branch, but that said amount should be charged to the Oklahoma branch.

In the first act of Congress in which provision was made for this purpose the following language is used:

of which sum one thousand five hundred dollars shall be paid for a physician for the agency, who shall furnish the necessary medicines. (Act June 22, 1874, 18 Stat. L., p. 163.)

Congress in express terms directed that "of this sum," meaning the \$51,000 appropriated, \$1,500 should be paid for a physician for the agency, who should furnish the necessary medicines.

It is very evident that said amount was to be taken from the gross sum appropriated, and that the appropriation was for the benefit of the Sacs and Foxes on the reservation set apart for that tribe under the treaty of 1867.

In some of the subsequent acts making annual appropriations for this purpose the language of the original appropriation is changed, but there is not such a change of language as would indicate a change of intent on the part of Congress. (Opinion of Assistant Attorney-General Hall, Int. Dept., Dec. 23, 1895.)

The annual deductions since the fiscal year 1884 on account of physician and medicine have ranged from \$1,260 down to \$1,100, averaging about \$1,150 instead of \$1,500, as charged by the memorialists, and they have participated in their proportion of the difference since the date named above.

The further claim is made that the Sacs and Foxes of Oklahoma have become citizens of the United States and of the Territory of Oklahoma; that the tribal organization can no longer exist, and that they should not have reserved for them the \$5,000 for the support of a tribal government.

Notwithstanding these Indians are citizens of the Territory of Oklahoma and of the United States, yet they have been treated by Congress as a tribe for the purpose of carrying out the treaty stipulations with them. This Congress may do. (3 Wallace, p. 419; Opinion of Assistant Attorney-General Hall, Int. Dept., Dec. 23, 1895.)

Their third claim is for their shares of \$147,393.32, appropriated by Congress to pay for land ceded by the treaty of 1867; \$50,302.84 is claimed on this account, with interest thereon at 5 per cent from 1873, amounting to \$57,848.27.

By the third article of the treaty of February 18, 1867 (15 Stat. L., p. 495), the United States agreed to pay the Sacs and Foxes, at the rate of \$1 an acre for about 157,000 acres of land ceded by the first and second articles of that treaty, these lands being the unsold por-

tion of their diminished reserve in Kansas, defined in the first article of their treaty of October 1, 1859, and of the unsold portion of their old reservation, provided by article 4 of the same treaty.

The lands thus ceded were subsequently ascertained to have an area of 147,393.32 acres, and Congress, by an act approved April 10, 1869 (16 Stat. L., p. 35), appropriated \$147,393.32, being the sum necessary to pay therefor at the rate of \$1 per acre.

After the payment of certain indebtedness of the tribe, provided for in the third article of the treaty of 1867, the balance remaining of the above-named fund was invested in 1873, under the provisions of the same article, in United States 5 and 6 per cent bonds, which, on maturity, were converted into United States 4 and 5 per cent bonds. These last-named bonds were subsequently disposed of, and the proceeds thereof, amounting to \$55,058.21, deposited in the Treasury to the credit of the tribe, under the provisions of the act approved April 1, 1880, (21 Stat. L., p. 70), and interest at the rate of 5 per cent per annum is paid thereon.

Interest amounting to \$61,129.62 has been collected on the aforesaid bonds and on the invested fund, an average of about 5 per cent per annum, and \$1,305.46 premium was realized from the sale of coin interest and \$3,839.50 premium from the sale of the 4 and 5 per cent bonds referred to, the whole received thereon aggregating \$66,274.58 (Senate Mis. Doc. No. 48, Fifty-third Congress, third session, pp. 21-25), from the date of the original investment to July 1, 1895.

Of the aforesaid interest income, \$11,523.18 has been placed in the hands of the agent for the Iowa Sacs and Foxes since 1886 for payment to them, and the same has been so paid, excepting the shares of six individuals, which have been returned to the Treasury and now remain to their credit on the books of that Department.

The twenty-first article of the treaty (1867) provides:

The Sacs and Foxes of the Mississippi, parties to this agreement, being anxious that all the members of their tribe shall participate in the advantages to be derived from the investment of their national funds, sales of lands, and so forth, it is therefore agreed that * * * no part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in the Indian Territory, as provided in this treaty, except those residing in the State of Iowa; * * *.

Under this article of the treaty the Iowa Sacs and Foxes are entitled to their just proportionate shares of the residue of the aforesaid fund appropriated to pay for the lands ceded by the first and second articles of the treaty.

The said third article of the treaty also made provision for the payment of—

the outstanding indebtedness of the said tribe, now represented by scrip issued under the provisions of previous treaties, and amounting, on the first of November, eighteen hundred and sixty-five, to twenty-six thousand five hundred and seventy-four dollars, besides the interest thereon, out of the proceeds of the sale of lands ceded in this treaty, and the amount herein provided to be paid to said Indians, after deducting such sums as under the provisions of this treaty are to be expended for their removal, subsistence, and establishing them in their new country, shall be added to their invested funds, and five per cent interest paid thereon, in the same manner as the interest of their present funds is now paid.

This provision of the treaty required the payment of certain indebtedness represented by scrip issued under the provisions of former treaties. The Iowa Sacs and Foxes were parties to former treaties, and as a part of this migratory band remained on the reservation with the tribe as late as the year 1866—small parties of them separating from

the main body in each of the years from 1862 to 1866, inclusive—and there being no record or evidence by which this indebtedness can be accurately apportioned among individuals or the several sections of the tribe, it is held that this branch is liable for its pro rata share thereof; but it is also held that they are not liable for any of the expenses of the removal of the tribe to and locating them on the new reservation in the Indian Territory, none of them having been so removed.

An examination of the records of the Indian Office and the Treasury Department shows that \$38,034.49 (Report of the Commissioner of Indian Affairs for 1871, p. 680) was paid on account of the aforesaid outstanding indebtedness out of the said sum of \$147,393.32 received for lands ceded under the treaty of 1867, leaving a balance of \$109,358.83, subject to distribution between the two branches of the tribe.

At the time of the appropriation of the aforesaid \$147,393.32 the Sacs and Foxes of Iowa numbered about 265 souls, and those in Oklahoma and Kansas about 728, the two branches aggregating 993 persons.

Therefore the Iowa branch is entitled to $\frac{265}{993}$ of the \$109,358.83 residue of the fund received in payment for lands sold under the first and second articles of the treaty of 1867, amounting to \$29,184.38, and interest thereon from July 1, 1873, to January 1, 1896, at the rate of 5 per cent per annum, being \$1,459.22 per year for twenty-two and one-half years, equal to \$32,832.45.

The memorialists also make the following statements in the aforesaid Senate document, viz:

(1) In 1869, the year the appropriation was made for the lands ceded by the treaty of 1867, the numbers of the two divisions of the tribe were as follows: Those removed to Oklahoma, 728; those in Iowa, 265. On the basis of these numbers those in Iowa are entitled to $\frac{265}{993}$ of said appropriation, \$147,393.32, which amounts to the sum of \$39,334.57. But instead of receiving this sum they got no portion of said appropriation made in payment for the cession of the tribal lands in the State of Kansas.

This is disposed of in the finding on claim No. 3.

It will be observed that in their claim No. 3, which is for the same objects as the above, they claim \$50,302.84, principal, instead of \$39,334.57, as above, and interest amounting to \$57,848.27.

(2) They also claim that instead of the balance of \$55,058.21 of the appropriation of \$147,393.32, made for the payment for the land ceded by the treaty of 1867, being placed in the Treasury to the credit of the tribe, they, the Iowa branch, should have received, in proportion to their numbers, as much of said payment as was devoted to the exclusive use and benefit of the Oklahoma branch, and that the remainder should have been placed in the Treasury or invested for the tribe, all the members of the tribe sharing in the income therefrom.

This is also disposed of by the finding in claim No. 3.

(3) By the treaty of 1842 a reservation for the tribe was given as part consideration for the cession of tribal lands in the State of Iowa. Another item of consideration for that cession was the payment by the United States of debts of the tribe to the amount of \$258,566.34. (Art. 2, 7 Stat. L., 596.)

The Kansas reservation was diminished by the treaty of 1859 (14 Stat. L., 469), and the proceeds were used exclusively for the benefit of those members of the tribe residing then in Kansas. The treaty provided that said proceeds should be expended in building houses, furnishing agricultural implements, stock animals, and other necessary aid for commencing agricultural pursuits upon the allotments of land to be taken on the diminished reservation. The said treaty also provided that the debts of the tribe and of the individuals thereof should be paid from said proceeds. It was stipulated that such debts should be first liquidated and their justness ascertained by an "examination thereof, to be made by their agent and the superintendent

of Indian affairs for the central superintendency, subject to revision and correction by the Secretary of the Interior."

The annual report of the Commissioner of Indian Affairs for 1852, commencing at page 549, contains a brief statement of the proceedings taken under the treaty of 1859, for the ascertainment of the indebtedness, expenditure of the funds, etc., from which the following is condensed, * * * making a total of \$271,822.49.

This amount constituted an indebtedness for which there were no funds on hand properly chargeable with its payment, the ceded lands not yet having been sold. To provide for this indebtedness certificates of indebtedness were issued for the whole sum. These certificates bore interest.

Sales of a portion of the lands were subsequently made under said treaty, viz, 268,502.68 acres for \$282,439.27. * * *

The amount of the principal of the interest-bearing certificates outstanding at the date (November 1, 1865) of the statement from which the foregoing figures are taken was \$26,574.59.

Thus the matter stood up to the date of the treaty of 1867, and these facts and figures show that those members of the tribe residing on the reservation in Kansas had not only received all the benefits arising from the sale of a large portion of the tribal lands and allotments of land on the diminished reservation, but were still in debt to the amount of \$26,574.59, with interest accumulated and accumulating thereon.

The seventh article of the treaty of 1859, which contained a provision regarding absent members of the tribe, provided—

That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty shall not be entitled to the benefit of any of its stipulations.

It has been shown that a part of the Iowa Sacs and Foxes separated themselves from the tribe on the reservation in 1854 or 1855, and that others of them left the reservation in each of the years from 1862 to 1866, inclusive, none of them, so far as can be discovered, ever returning, as required by the aforesaid article 7 of the treaty of 1859.

It was not the policy or the custom of the Government during these years to countenance or permit absenteeism from reservations, or to pay annuities to Indians except at their agencies on their reservations.

Those who left the reservation prior to the date of the treaty and failed to return forfeited any rights they might have acquired under the provisions of article 7 had they returned.

As to those who left subsequent to the date of the treaty, there is nothing of record, nor is there any evidence to show that these were not of that class of "individual members" whose debts, "due and owing at the date of the signing and execution hereof," it was agreed by the fifth article of the treaty "shall be liquidated and paid out of the fund arising from the sale of their surplus lands." By their continued absence, without the consent of the Government, these also forfeited any rights that may have been attached to them as members of the tribe.

There is nothing found due under the provisions of the treaty of 1859.

(4) The interest on the unexpended \$55,058.21 of the ceded land appropriation has been 5 per cent upon the greater portion, with premium on the gold, and 6 per cent on the remainder, while the same was invested in United States bonds, and 5 per cent since it was placed in the Treasury.

The investment of the unexpended balance above referred to was made in 1873 in \$54,200 United States 10-40 5 per cent bonds, and \$905.41 United States loan of 1865, 6 per cent bonds, at an aggregate cost of \$61,855.73. The \$905.41 United States 6 percents were redeemed in 1878, and the proceeds, \$905.41, invested in \$858.21 United States funded loan (1881) 5 per cent bonds, and the \$54,200 United States ten-forties were redeemed in 1879 at par, the proceeds being invested in \$54,200 United States consols of 1907, 4 percents, thus making the cost

of the \$55,058.21 in stocks \$61,855.73, and showing \$6,797.52 as the cost of the several investments.

The bonds were disposed of in 1881, realizing a premium of \$3,839.50 on the sale, and the principal, \$55,058.21, was placed in the Treasury to the credit of the tribe, at 5 per cent interest, under the provisions of the act of April 1, 1880.

For several years after the original investment in 1873 gold was at a premium, and the interest being payable in that coin, the same was converted into currency as collected and the premium as well as the interest passed to the credit of the tribe. The amount of premium thus realized was \$1,305.46. This, with the premium realized on the sale of the 4 and 5 per cent bonds, \$3,839.50, as stated, makes an aggregate of \$5,144.96 profits from this source. Deducting this sum from the \$6,797.52 shown as the cost of the several investments, leaves \$1,652.56 as the net cost of these transactions.

Interest to the amount of \$61,129.62 has been collected on the aforesaid investments up to July 1, 1895, being a fraction over 5 per cent for the whole time, the excess over that rate for the entire period being \$365.54. Taking this amount from the net cost of the investments, as shown above, leaves the net income \$1,187.02 less than would have accrued in the same period on the investment of an equal sum at 5 per cent.

This also has been disposed of by the finding in claim No. 3.

It is believed that the foregoing covers all the matters presented by the memorialists.

FINDING.

First claim.—Nothing is found due on this claim for annuities from 1853 to 1867, it being held that the same were forfeited in consequence of the Indians abandoning their reservation in defiance of treaty obligations and without the consent of the United States Government.

Second claim.—Nothing is found due on this claim for annuities charged to have been unjustly apportioned from 1867 to 1894. It is held that the same had been properly and justly apportioned and paid in accordance with the provisions of the several treaties and acts of Congress.

Third claim.—On this claim for their proportionate shares of \$147,393.32, appropriated by the act of April 10, 1869, in payment for lands ceded by the first and second articles of the treaty of February 18, 1867, there is found due them the sum of \$29,184.38 on account of principal, and \$32,832.45 interest thereon, at the rate of 5 per cent per annum from July 1, 1873, to December 31, 1895, inclusive, aggregating \$62,016.83.

The reasons for this finding will be found in the statement of the "third claim," beginning on page 9 of this account.

As has been shown, \$11,523.18 has been paid to the memorialists from the interest account of the tribal invested fund since 1886. The finding of their "third claim" makes an allowance for interest on the amount of the principal due for the whole time of the investment, from 1873. The above sum is therefore to be deducted from the amount found due them on the "third claim."

It has also been shown that \$19,020 were paid them in each of the fiscal years 1885 and 1886 on account of their share of the tribal annuities. This was \$7,600.40 in excess of their proper proportion under the decision of the Secretary of the Interior of June 1, 1886. This sum is also to be deducted from the finding on the "third claim."

The account, therefore, will stand thus:

Amount of principal found due on "third claim".....	\$29,184.38
Amount of interest found due on same claim	32,832.45
	<hr/>
Making a total of.....	62,016.83
Deduct as follows:	
On account of interest paid.....	\$11,523.18
On account of overpayments of annuities, fiscal years 1885 and 1886.....	7,600.40
	<hr/>
	19,123.58
	<hr/>
Leaving a balance due of	42,893.25

WASHINGTON, D. C., *February 6, 1896.*

SIR: We beg to acknowledge receipt of your letter of the 30th of January, 1896, inclosing to us, as attorneys for that branch of the Sac and Fox Indians of the Mississippi residing in the State of Iowa, "a copy of an account prepared in the Department, in conformity with the provisions of the act of March 2, 1895, of their claims for their shares of the tribal annuities under the several treaties with the tribes."

We are also informed in the same letter that—

Notice of this accounting has been given to the Oklahoma branch of the tribe, and they have been requested to file their objections thereto, if any, within a reasonable time.

We have examined and considered the said "statement of account," and we respectfully submit, on behalf of our clients, that error has been committed therein as follows:

The account sets forth:

First claim.—Nothing is found due on this claim for annuities from 1853 to 1867, it being held that the same were forfeited in consequence of the Indians abandoning their reservation in defiance of treaty obligations and without the consent of the United States Government.

The statement of facts alleged and provisions of treaties upon which this adverse conclusion is stated may be briefly summarized as follows: That all of the tribe did remove to Kansas under treaty provisions; that after remaining in Kansas for about ten years, the pioneers of those who returned to Iowa reached that State in the winter of 1854–55, after having received their share of the annuities paid to the tribe in the latter part of 1854; that they were not upon the reservation in Kansas after that date, "and, so far as the record or evidence shows, never claimed during the years named any annuities that were paid out to the Sacs and Foxes upon the said reservation." (See pp. 6 and 7 of the "Statement of account.")

Article 7 of the treaty of 1859 is also quoted (*ibid.*, p. 7) as showing that those of the tribe who returned to Iowa forfeited their annuities by abandoning the reservation "in defiance of treaty obligations."

It is true that those of the tribe who returned to the State of Iowa, whether they returned in 1853 or in 1854, did not go back to the agency in Kansas to claim their annuities; but it is not true in any sense that they made no claim to and for their annuities. The record shows to the contrary. On page 1 of their memorial to Congress (Senate Mis. Doc. No. 48) is set out an act of the legislature of the State of Iowa, showing that the Sacs and Foxes who had returned had made known to the State legislature their return, their condition, situation, their reasons for returning to their old home, their desire and request to be permitted to remain in said State, and also their complaints against nonpayment

of their annuities, and their request to the General Government for payment thereof through the State legislative act set forth.

It will be seen that the said act of the legislature of the State of Iowa was approved July 15, 1856; that it grants the petitioners permission to reside in said State; and, further, it contains this:

And that the governor be requested to inform the Secretary of War thereof, and urge on said Department the propriety of paying said Indians their proportion of the annuities due or to become due to said tribe of Sac and Fox Indians.

The governor of the State of Iowa was *ex officio* superintendent of Indian affairs over those Indians when they removed from the State; they, with their limited knowledge of affairs of civilized government, naturally supposed that he was the proper official to whom they should petition; all the tribal lands in that State had been ceded by the tribe; they received the sanction of the State and by implication that of the United States to remain in the State and the failure then on the part of the Indian Department to object to the proposed settlement of these Indians in Iowa was an approval thereof by implication.

Clearly the Indians had no thought of forfeiting their annuities nor of abandoning any of their rights thereto under their treaties, but on the other hand they made, through the highest authority of the State of their adopted residence a formal and respectful request for the payment of their "annuities due or to become due." The legislative act was full notice to the General Government.

The adverse conclusion formulated in the "Statement of account" on this item of the claims of the memorialists appears to be based upon an opinion prepared by the Assistant Attorney-General for the Department of the Interior, dated December 23, 1895, which is yet pending before the Secretary of the Interior, wherein it is stated:

I have been informed, upon inquiry at the Indian division, that during said years it was the policy and the practice of the Government to pay no annuities to Indians who absented themselves from reservations without authority during the time of their absences, unless there was some provision of statute, or treaty, or agreement with the tribe of Indians that would authorize or require payment to such absent Indians. In this case I have been unable to find any requirement for the payment to the Sac and Fox Indians of Iowa from 1855 up to and including 1866.

In the same opinion it is claimed that the policy of nonpayment of annuities to Indians who have absented themselves from the reservation without authority is indorsed by the terms of the treaty (article 7) of 1859 with the Sacs and Foxes of the Mississippi.

Both these propositions are erroneous, and they may be considered together.

The provisions of article 7 of the treaty of 1859 should not be extended beyond the limits to which they are specifically confined by the terms thereof. The whole article is set out on page 7 of the "Statement of account." It sets forth the advantages of the treaty of which it forms a part; states that a portion of the tribe was then absent from the reservation; that it was desired that the absent portion of the tribe be invited to return to and remain with the tribe, and closes with this clause:

Provided, however, That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this treaty shall not be entitled to any of the benefits of its stipulations.

No annuities for the tribe were created by that treaty. No claim is based upon that treaty, near or remote, and it has no bearing upon the annuities of the tribe. It relates to land only. All that is said in their memorial by claimants as to the money accruing to the tribe under the

treaty of 1859 is so much of the history of the treaty as to bring the financial transactions up to the treaty of 1867, and to show that when the latter treaty was made there remained of the tribal indebtedness created under the treaty of 1859 an unpaid balance of \$26,574.59 (see Senate Mis. Doc. No. 48, Fifty-third Congress, third session, pp. 6 and 7), of which the Iowa Sac and Fox Indians claim nothing.

It is shown in the "Statement of account" that the annuities of the tribe arise under treaties of 1804, 1837, and 1842 (see p. 3), in which there are no such provisions as those of article 7 in the treaty of 1859. It has been shown that the forfeiture stipulated for in article 7 of the treaty of 1859 is strictly confined to the benefits of its stipulations; that is, the benefits of the treaty of 1859, and of that alone.

It will be seen by article 21 of the treaty of 1867 that by that treaty a broader forfeiture of treaty benefits was proposed for the absent members of the tribe. It is in these words:

No part of the funds arising from or due the nation under this or previous treaty stipulations shall be paid to any bands or parts of bands who do not permanently reside on the reservation set apart to them by the Government in Indian Territory, as provided in this treaty, except those residing in the State of Iowa. (15 Stat., L., 504.)

The Sacs and Foxes then in Iowa are thus expressly excepted from the forfeiture of any benefits under that treaty or under previous treaties. It is contended that not only by the ratification of the treaty of 1859 the United States did not intend to sanction any treaty provision that would operate a forfeiture of any benefits accruing to the Indians in Iowa, other than the benefits accruing under that treaty, but that no existing rights were forfeited, and the words of the treaty of 1859 strictly confine forfeitures to the benefits accruing under that treaty. To that extent only was punatory legislation carried by Congress.

Laws regulating the payment of annuities to Indians are as follows:

The act of June 30, 1834, entitled "An act to provide for the organization of the Department of Indian Affairs," provides:

SEC. 11. *And be it further enacted*, That the payment of all annuities or other sums stipulated by treaties to be made to any Indian tribe shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe shall appropriate their annuities to the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designate. (4 Stat. L., 737.)

The foregoing remained the law and regulation on the subject until the act of March 3, 1847, which provides:

SEC. 3. *And be it further enacted*, That the eleventh section of the "Act to provide for the better organization of the Department of Indian Affairs," approved June thirtieth, eighteen hundred and thirty-four, be, and the same is hereby, so amended as to provide that all annuities or other moneys, and all goods, stipulated by treaty to be paid or furnished to any Indian tribe, shall, at the discretion of the President or the Secretary of War, instead of being paid over to the chiefs, or to such persons as they shall designate, be divided and paid over to the heads of families and other individuals entitled to participate therein, or, with the consent of the tribe, be applied to such purposes as will best promote the happiness and prosperity of the members thereof, under such regulations as shall be prescribed by the Secretary of War, not inconsistent with existing treaty stipulations. (9 Stat. L., 203.)

The next provision of law on the subject is found in the act of August 30, 1852, wherein the following is contained:

SEC. 3. *And be it further enacted*, That no part of the appropriations herein made, or that may be hereafter made, for the benefit of any Indian or tribe, or part of a tribe of Indians, shall be paid to any attorney or agent of such Indian, or tribe, or part of a tribe; but shall in every case be paid directly to the Indian or Indians themselves to whom it shall be due, or to the tribe or part of a tribe per capita,

unless the imperious interest of the Indian or Indians, or some treaty stipulation, shall require the payment to be made otherwise, under the direction of the President.

Neither statutory inhibition nor treaty stipulation existed against the payment of annuities to these Indians. This was the law for the period from 1852 to 1876, and covers the period involved.

The next provision of law on the subject is found in the act of August 15, 1876, as follows:

SEC. 2. That no supplies or annuity goods, for which appropriation is made in this act, shall be issued to any band or tribe of Indians while the same may be engaged in hostilities against the United States or in depredations upon settlers; nor shall any sum of money appropriated by this act for any tribe of Indians for whom a reservation or territory shall have been made be paid to them or expended for their benefit unless such tribe and the warriors thereof shall remain peaceably within the territory assigned to them, unless absent by the consent of the agent. (19 Stat. L., 199.)

More than nine years prior to the enactment of the last quoted provision of law the Sacs and Foxes of the Mississippi in Iowa had received the sanction of Congress to remain in that State (see act of March 2, 1867, 14 Stat. L., 507; p. 2, Mis. Doc. 48, Fifty-third Congress, third session), and they had received the sanction of the State to reside there twenty years before, with notice to the United States.

The regulations of the Indian Department governing the payment of annuities to tribes are, as a rule, based upon the laws of Congress on the subject. No regulation has come under our notice in the examination of this matter that is in conflict with the law of August 30, 1852, and it is presumed that there are no such regulations in existence and that none so existed from 1853 to 1867.

The existing regulation of the Indian Office for the payment of annuities is as follows:

154. Annuity funds, except where otherwise clearly indicated by treaty stipulations, must be divided and paid to the individual members of the tribe entitled to participate therein in equal shares per capita, heads of families receipting for the amount due them, their wives, and the minor members of their families. * * *
(See Reg. Ind. Office, 1894.)

The foregoing is incorporated in the regulations of the Indian Office, approved by the present Secretary of the Interior, and they were the regulations governing the subject prior thereto, as will be found by reference to the regulations approved and adopted in 1884, and also those approved and adopted in 1880. We have no copies of the regulations prior to those dates available, but as that regulation is so clearly in accordance with the law of August 30, 1852, it is not probable that any regulations adopted and approved after its enactment were made inconsistent therewith.

A precedent for the adjustment of the tribal funds as claimed by the Sac and Fox Indians of the Mississippi residing in the State of Iowa will be found in the case of the Winnebago Indians.

By the treaty of 1859 the Winnebago tribe of Indians, then living in the States of Wisconsin and Minnesota, ceded a portion of their lands to the United States. The ceded lands were to be sold and the proceeds devoted to establishing the tribe on the diminished reservation and to paying the debts of the tribe.

That treaty contains as its Article V the exact words of Article VII of the treaty of the same year with the Sacs and Foxes of the Mississippi (*mutatis mutandis*), and which is as follows:

The Winnebagoes, parties to this agreement, are anxious that all the members of their tribe shall participate in the advantages herein provided for respecting their permanent settlement and their improvement and civilization, and to that end to

induce all that are now separated from to rejoin and unite with them. It is therefore agreed that as soon as practicable the Commissioner of Indian Affairs shall cause the necessary proceedings to be adopted to have them notified of this agreement and its advantages, and to induce them to come in and unite with their brethren; and to enable them to do so and so sustain themselves for a reasonable time thereafter, such assistance shall be provided for them, at the expense of the tribe, as may be actually necessary for those purposes: *Provided, however,* That those who do not rejoin and permanently reunite themselves with the tribe within one year from the date of the ratification of this agreement shall not be entitled to the benefit of any of its stipulations. (12 Stat. L., 1103).

A large number of the tribe, less than a majority, did not comply with the treaty by going to and living upon the diminished reservation. They petitioned for their proportion of tribal annuities and land funds, which was denied to them by the Indian Office for the reason that they had ceased to live with the tribe. This action of the Indian Office was approved by the Secretary of the Interior. For the correspondence see Annual Report of the Commissioner of Indian Affairs for 1863, page 339.

The claim of said Winnebagoes was brought to the attention of Congress, and that body, in the provision of the Indian appropriation act of June 25, 1864, appropriating the interest and other funds for the Winnebago tribe, enacted the following:

Provided, That the proportion of annuities to which the said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes, or to be used by the Secretary of the Interior in defraying the expenses of their removal, or in settling and subsisting them on any other reservation which may hereafter be provided for them (see 13 Stat. L., 172).

This equitable and righteous law was not fully complied with by the administrative branch of the Government. The Winnebago tribe ceded the remainder of their lands in Minnesota and were removed to a reservation in the then Territory of Nebraska. This was done under the act of February 21, 1863. Those of the tribe in Wisconsin had not rejoined the tribe, and did not accompany them to the new reservation in Nebraska. More than the proportionate share of the tribal funds was paid to and expended for those removed to Nebraska. The Wisconsin Winnebagoes again complained of the unjust distribution of the tribal annuities and funds, and Congress, by the act of January 18, 1881, directed that the annuities and appropriations under treaties be dispersed by the Secretary of the Interior pro rata; and further provided that a census be taken of both branches of the tribe and an account stated between them on the basis of said census of all the funds of the tribe from 1864 to the date of the act, January 18, 1881; and then provided that—

The balance found in favor of the Winnebagoes of Wisconsin, whatever the amount may be, shall hereafter be held and considered as a debt due to them from that portion of the tribe residing in Nebraska; and until said debt shall have been extinguished the Secretary of the Interior shall cause to be deducted annually from the proportion of the annuity moneys due to the Winnebago Indians in Nebraska, to be paid to the Winnebago Indians in Wisconsin, such proportion of the share of the annuities belonging to the said Winnebagoes of Nebraska as he may deem right and proper: *Provided, however,* That such sum shall not be less than seven thousand dollars per annum. (See act of January 18, 1881; 21 Stat. L., pp. 316, 317, especially section 4.)

This case of the Winnebagoes so closely resembles that of the Sacs and Foxes residing in Iowa that it is not necessary to follow up the history of the Pottawatomies, mentioned with them in the act of June 25, 1864. (13 Stat. L., 172.)

It is true that the Indian Office has at times made regulations seeking to deprive of their annuities Indians who leave their reservations and become citizens of the United States, unless otherwise provided by treaty or act of Congress. (See par. 161, Reg. of 1884, and par. 90, Reg. of 1880.) Congress was not long in correcting this injustice, as will be seen by the sixth section of the act of February 8, 1887, known as the "General allotment act" (24 Stat. L., 390). Indeed, the regulation was contrary to the express terms of the fifteenth section of the act of 1875, wherein it is provided, as to an Indian becoming a citizen, that he—

shall be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations. (8 Stat. L., 420.)

There are perhaps instances where the Indian Office has refused payment of annuities to Indians absent from their reservation, but in such cases there was some express treaty or legislative enactment applicable to the specific tribe warranting it, or the absent Indian was supposed to be dead. Such may have been done in other instances, but there is no law warranting such action. There may be some excuse for such action for punitive purposes or when the whereabouts of an absent Indian is not known to the Indian Office. But there is no excuse for violating law and treaty provisions in depriving any Indians of their annuities whose whereabouts are known.

In view of the clause of the act of 1867, hereinafter set out in full, providing that these Indians "shall be paid pro rata according to their numbers, of their annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State," and as the State gave its assent in 1856, whereof the United States had notice, it is contended that the payment of annuities provided for should apply to the then past as well as to the date of the act. A large balance was found due the Wisconsin Winnebagoes under the law of 1881, and it was recouped from the portion of the tribal funds subsequently accruing to the Nebraska Winnebagoes, and was paid to and for the identical Wisconsin Winnebagoes entitled thereto, and this is precedent for action respecting the present claimants.

The Sac and Fox Indians in the State of Iowa are seeking from Congress redress for the same kind of wrongs that were suffered by the Winnebagoes of Wisconsin. The oldest and most intelligent of the band now residing in Iowa testify that the following numbers returned to that State: 144 in 1855, 77 in 1862, 42 in 1863, 13 in 1864, 12 in 1865, and 22 in 1866; making a "total, 310, which was the muster in 1867."

The first enrollment made of them by the United States after their return to Iowa was in 1867 or the year before, when only 265 were found and enrolled. It is presumed that the records of the Department contain information as to the enrollment of these Indians by the proper authorities of the State of Iowa, as was required by the act of the legislature of that State approved July 15, 1856, and that from the records and the evidence presented in the case a fair and reasonable average of the numbers of those residing in the State of Iowa from 1854-55 to 1866 may be ascertained, such an average as will do justice to those in Iowa, while doing no injustice to those now in Oklahoma, and that on such average of their numbers for those years a "Statement of the account" of what is due and payable to the memorialists on account of annuities withheld from them during those years can be made.

The testimony of the Indians as to the numbers returning to Iowa at different times has been filed since the presentation of their memorial

to Congress. If we take those figures as a basis for the average, instead of the enrollment made in 1867, not taking any account of births or deaths, the average from 1855 to 1866 is found to be 205 $\frac{1}{2}$. For the same period the average of those now in Oklahoma is found, from the official statement of payments as reported by the Treasury (Mis. Doc. No. 48, pp. 17-19), to be 1,169.5. This would give the proper proportionate shares of the annuities as $\frac{205\frac{1}{2}}{1137\frac{5}{8}}$ for those in Iowa, and $\frac{1169.5}{1137\frac{5}{8}}$ for those now in Oklahoma for the period from 1855 to 1866 inclusive. For this treaty period there was no charge upon the fund for school and national government; therefore the proportionate share to which claimants are entitled on this head on the basis of population named is \$91,466.18.

The "Statement of account" sets forth as to the second claim the following:

Second claim.—Nothing is found due on this claim for annuities charged to have been unjustly appropriated from 1867 to 1894. It is held that the same has been properly and justly apportioned and paid in accordance with the provisions of the several treaties and acts of Congress.

The memorialists do not agree with the construction of the several provisions of the treaty and acts of Congress applicable to this portion of their claim. We do not deem it necessary to consume further time and space in setting forth their contention for their proportionate share of the two sums of \$5,000 each, annually devoted to the support of schools and the support of the national government of that portion of the tribe in Oklahoma, and taken for those purposes from the total amount of the annuities, before any pro rata distribution is made between the two portions of the tribe.

But as to the amount annually taken from the total sum of the annuities, before apportionment, and used wholly for the pay of a physician and for medicines for that portion of the tribe in Oklahoma, without any warrant in the treaty therefor, we feel that the finding is so manifestly unjust, and based upon such a strained construction of the provisions of the acts of Congress, that we are constrained to appeal to the Secretary of the Interior to give to it his most careful consideration.

The treaty of 1868 provided that the United States should for five years furnish a physician and medicines for the tribe. (15 Stat. L., 495, art. 10.) This provision soon expired. The need for the physician and medicines continued to exist. Congress provided therefor in the clause of the appropriation acts making appropriations for the annuities, aggregating \$51,000, in such language as the following—

of which sum, one thousand five hundred dollars shall be paid for a physician for the agency, who shall furnish the necessary medicines. (Act of June 22, 1874, 18 Stat. L., 163.)

In the act of August 15, 1876, the language was changed, and has thereafter continued as follows:

Provided, That the sum of one thousand five hundred dollars of this amount shall be used for the pay of a physician and for purchase of medicines. (19 Stat. L., 189.)

In the opinion upon which the statement of this item of account is based it is stated:

It is very evident that said amount was to be taken from the gross sum appropriated, and that the appropriation was for the benefit of the Sac and Fox on the reservation set apart for the tribe under the treaty of 1868.

Let us look further into this. On the subject of the payment of the annuities to the Sac and Fox Indians in Iowa, who from 1854 to 1866

had received not a penny of the tribal annuities, Congress enacted in 1867 the following:

That the band of Sacs and Foxes of the Mississippi, now in Tamar (Tama) County, Iowa, shall be paid pro rata according to their numbers, of the annuities, so long as they are peaceful and have the assent of the government of Iowa to reside in that State. (14 Stat. L., 507.)

By the act of 1882 the following is provided:

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them from appropriations for fulfilling the stipulations of said treaties no greater sum thereof than that heretofore set apart for them. (22 Stat. L., 78.)

This latter act was so manifestly unjust, perpetuating a wrong against which the Sacs and Foxes of Iowa were then protesting, that Congress, by the law of 1884, provided—

That hereafter the Sacs and Foxes of Iowa shall have apportioned to them, from appropriations for fulfilling the stipulations of said treaties, their per capita proportion of the amount appropriated in this act, *subject to provisions of treaties with said tribes.*

The apportionment named is not subject to Congressional enactment, but to “provisions of treaties.” There is no existing treaty provision for the support of a physician or for the purchase of medicines.

It surely will not be contended that Congress intended that the clause of the law providing for a physician and for medicines, at the cost of not exceeding \$1,500, shall have greater force and more controlling effect than the special provisions of law prescribing the manner for the distribution of a large sum of money between two interested and contending portions of a tribe.

It seems hardly necessary to narrow down this item of the claim to the period since the act of 1884, which provides that the apportionment shall be “per capita,” “subject to provisions of treaties.” It is not consistent with existing treaty provisions that the amount set apart annually by acts of Congress for physician and medicines shall be taken from the \$51,000 before any apportionment is made.

The memorialists accept the finding as to the third claim, stated in the “Statement of account” as follows:

Third claim.—On this claim for their proportionate shares of \$147,393.32, appropriated by the act of April 10, 1869, in payment for lands ceded by the first and second articles of the treaty of February 18, 1867, there is found due them the sum of \$29,184.38 on account of principal, and \$32,832.45 interest thereon, at the rate of 5 per cent per annum from July 1, 1873, to December 31, 1895, inclusive, aggregating \$62,016.83.

The interest on the principal should be calculated to July 1, 1896, or to the date of payment.

It is, however, observed that in the final statement of this third claim in the “Statement of account” a deduction of \$7,600.40 is made from the allowance stated on the third claim, being, as alleged, excess of their proper share of tribal annuities under the decision of the Secretary of the Interior of June 1, 1886. We protest against any such deduction. We contend that the claimants did not receive their pro rata share of the annuities between the years from 1867 to 1894, or to date, inclusive. If, as it is held, “this matter was properly disposed of by Secretary Lamar,” and that it consequently can not be reopened for a readjustment for the benefit of the Sac and Fox Indians of Iowa, it should not be disturbed for the benefit of the Sac and Fox Indians of Oklahoma. If it is a settled account as to *one*, it should be and remain a settled account as to *all*. If it should be reopened for a fair, equitable, and just adjustment of the item annually expended for physician and

medicine alone for the Oklahoma Sacs and Foxes, a large balance would be found in favor of the Sacs and Foxes of Iowa.

Wherefore, protesting against so much of the findings of said "Statement of account" as are erroneous and fail of justice to the Sac and Fox Indians of the Mississippi now residing in the State of Iowa, it is respectfully urged that prompt action be taken by the Secretary of the Interior in the further consideration of said account, so as to pay to the claimants, through the present session of Congress, all that is now possible of their just demands, and that so much of claimants' demands as can not be fully and finally determined in time for disposition by the present session of Congress be continued for further investigation.

J. M. VALE,
R. V. BELT,

Of Counsel for the Sac and Fox Indians of the Mississippi.

Hon. HOKE SMITH,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 12, 1896.

SIR: I am in receipt of your communication of the 6th ultimo, as attorney for the Iowa branch of the Sac and Fox of the Mississippi Indians, objecting to and contesting certain of the findings in a "Statement of account" between the above-named tribe and the branch thereof referred to, prepared by the Department in conformity with the provisions of the act of Congress approved March 2, 1895 (28 Stat. L., 875-903), a copy of which was furnished for your information and use with Department letter of January 30th last, in compliance with that provision of the aforesaid act requiring that full opportunity be given "to all parties in interest to be heard."

The objections set out in your said communication as to the aforesaid findings are, briefly, that error has been committed; that the findings are in contravention of the facts and of the laws and of the regulations of the Indian Office regarding the payment of annuities to Indians.

In support of these contentions the acts of June 30, 1834 (4 Stat. L., 737); March 3, 1847 (9 Stat. L., 203); August 30, 1852 (10 Stat. L., 41), and August 15, 1876 (19 Stat. L., 199), are cited, and the regulations of the Indian Office applicable to annuity payments are also referred to.

Objection is made to the first finding on the ground that—

More than nine years prior to the enactment of the last quoted provision of law (act of August 15, 1876) the Sacs and Foxes of the Mississippi in Iowa had received the sanction of Congress to remain in that State, and they had received the sanction of the State to reside there twenty years before, with notice to the United States.

The case of certain stray bands of Winnebagoes is also cited as a precedent for the adjustment of the tribal funds as claimed by the Iowa Sacs and Foxes (act of June 25, 1864, 13 Stat. L., 172).

The grounds of objection set up as to the finding in the second claim refer principally to that part of the claim for the share of the said band to the \$1,500 annually for several years appropriated or set aside from the tribal annuities by act of Congress for a physician and the purchase of medicine, the contention being that—

The apportionment named is not subject to Congressional enactment, but to "provisions of treaties." There is no existing treaty provision for the support of a physician or for the purchase of medicine.

Sufficient answer to this seems to be warranted by the provisions of the sixth article of the treaty of October 1, 1859 (15 Stat. L., 469), wherein provision is made that—

In order to render unnecessary any further treaty engagements or arrangements hereafter with the United States, it is hereby agreed and stipulated that the President, with the assent of Congress, shall have power to modify or change any of the provisions of former treaties with the Sacs and Foxes of the Mississippi in such manner and to whatever extent he may judge to be necessary and expedient for their welfare and best interest.

This provision of the treaty of 1859 is still in force, and is ample authority for the President of the United States, with the consent of Congress, to make any disposition of the annuities of the tribe that will inure to their benefit, not in conflict with subsequent treaty stipulations or the laws of Congress.

Now, as to the finding in the first claim.

Article 3 of the treaty of 1804 (7 Stat. L., 85) provides:

In consideration of the cession and relinquishment of land made in the preceding article, the United States will deliver to the said tribes, at the town of St. Louis or some other convenient place on the Mississippi, yearly, and every year, goods suited to the circumstances of the Indians of the value of one thousand dollars. * * *

Section 9 of article 2 of the treaty of October 21, 1837 (7 Stat. L., 540-541), provides for the investment of \$200,000—

and to guarantee to the Indians an annual income of not less than five per cent, the said interest to be paid to them each year, in the manner annuities are paid, at such time and place, and in money or goods, as the tribe may direct.

Again, by article 2 of the treaty of October 11, 1842 (7 Stat. L., 596), it is agreed:

In consideration of the cession contained in the preceding article, the United States agree to pay annually to the Sacs and Foxes an interest of five per centum upon the sum of eight hundred thousand dollars.

These stipulations constitute the law governing the tribal annuities of the Sacs and Foxes, and are solemn obligations on the part of the Government to annually pay them certain stipulated sums at some "convenient place" or at such "time and place" as the tribe may direct.

The several acts of 1834, 1847, and 1852, cited by you, are general in their scope, conferring discretionary powers on the President and the Department, and in no manner conflict with or contravene the provisions of the aforesaid treaties as to the manner or the time or place or places of the payment of the tribal annuities. The act of August 15, 1876, also cited by you, has no application in this case.

In article 6 of the treaty of 1842 this provision also appears:

It is further agreed that the Sacs and Foxes may, at any time, with the consent of the President of the United States, direct the application of any portion of the annuities payable to them under this or any former treaty. * * *

By this stipulation the Sacs and Foxes retain control of all their annuities, subject to treaty provisions, and this has never been modified, except, as hereinbefore stated, by article 6 of the treaty of 1859, authorizing the President to "modify or change any of the provisions of former treaties," and by certain provisions in the treaty of 1867.

Again, the following provision appears in the said treaty of 1867, article 8 (15 Stat. L., 497):

No part of the invested funds of the tribe, or of any moneys which may be due to them under the provisions of previous treaties, nor of any moneys provided to be paid to them by this treaty, shall be used in payment of any claims against the tribe accruing previous to the ratification of this treaty, unless herein expressly provided for.

This stipulation of itself seems to be a complete bar to any claim of the Iowa Sacs and Foxes prior to the date of the ratification of that treaty, October 14, 1868.

Although recognized by this treaty, there is much doubt whether the said Iowa branch would have been entitled to any of its benefits prior to the date of its ratification but for the act of March 2, 1867 (14 Stat. L., 507), under the provisions of which a payment was made to them in that year.

There seems to be little similarity between this case and that of the Winnebagoes, cited by you, except that in both instances small bands strayed away and remained separated from their tribes. In fact, in other respects they are totally different, as will appear upon a statement of the cases.

The Iowa Sacs and Foxes settled in that State, some of them several years prior to 1867 and others between 1862 and 1866, and were recognized by act of Congress in the year first named, and by the treaty with the tribe made in the same year, not in the original draft of the latter, however, but being named in an amendment prepared in the Senate when the articles were before that body for consideration, on July 25, 1868, more than a year subsequent to the conclusion of the treaty between the contracting parties.

In compliance with the above-named act of Congress payments to them were immediately begun and have continued ever since, with varying amounts, to conform with the requirements of subsequent legislation in their behalf.

In the case of the Winnebagoes, it appears that certain stray bands of this tribe remained in Wisconsin and Minnesota, upon lands ceded to the United States by treaty of 1859 (12 Stat. L., 1101), failing to go with the rest of the tribe upon the diminished reserve created by that treaty.

In 1864, by act of June 25, of that year (13 Stat. L., 172), Congress, in making an appropriation for "deficiencies in subsistence and expenses of removal and support of the Sioux and Winnebago Indians of Minnesota, during the fiscal year ending June thirtieth, eighteen hundred and sixty-four," enacted the following relating to the Winnebagoes:

Provided, That the proportion of annuities to which said stray bands of Pottawatomies and Winnebagoes would be entitled if they were settled upon their reservations with their respective tribes shall be retained in the Treasury to their credit, from year to year, to be paid to them when they shall unite with their said tribes. * * *

At the time of this legislation the Winnebago tribe had been removed to the then Territory of Nebraska, under the provisions of the act of February 21, 1863 (12 Stat. L., 658), but the stray bands referred to, having failed to rejoin the tribe in Wisconsin, did not accompany their brethren to the new reservation in Nebraska.

The provisions of the act of 1864 seem not to have been complied with; therefore by act of January 18, 1881 (21 Stat. L., 315), Congress directed that a census be taken of those residing in Nebraska and Wisconsin, and that the proportion of the annuities of the latter for the period from the date of the aforesaid act of 1864 be ascertained and paid to them, a method of adjustment between the two branches of the tribe being provided for in the said act of 1881.

In this case, therefore, it appears that the provision of law requiring the proportion of annuities due the aforesaid stray bands of Winnebagoes to be retained in the Treasury for their benefit was not fulfilled, and that, by subsequent act of Congress, these arrearages were made

good to them, but no provision was made for any arrearages prior to the act of 1864, nor were any ever paid, although the said stray bands were separated and absent from their tribe from or prior to the date of the treaty with the tribe of April 15, 1859, before noted.

That it was not the practice or custom, but was against the policy of the Department to pay annuities to Indians off their reservations, is well established by the following extract from a letter, dated September 17, 1863, of the Secretary of the Interior to Francis Beveridge, who had petitioned in behalf of certain Winnebago Indians, then living off their reservation, for their distributive shares of the tribal annuities (Interior Department files, record of letters sent, vol. 4, p. 376), viz:

* * * The policy of the Government is to establish the Winnebagoes in such manner as will enable them to obtain their living by agricultural pursuits, and to that end large expenses have been incurred in the preparation of their new homes, on the upper Missouri, for the experiment; and the information possessed by the Department encourages the belief that the effort will be attended with success. All the means possessed by the Winnebagoes are necessary to the successful prosecution of the enterprise, and the proposition to parcel out their funds can not, therefore, be entertained.

If the parties asking the distribution of these annuities in Minnesota have become so far civilized as to justify their remaining in that State, and taking upon themselves the duties of citizens, they can not, if they remain in the State, expect to be treated by the Department as Indians. All has been done for them by the Government that they had a right to expect. * * * If they desire, still, to be considered Winnebagoes they must unite with their tribe at their new home, and share their perils, as well as their fortunes. * * *

The request of the petitioners can not be granted.

Very respectfully, your obedient servant,

J. P. USHER, *Secretary of the Interior.*

The Sacs and Foxes of Iowa had less cause for withdrawing from the tribe than had these Winnebagoes in their refusal to rejoin theirs. The latter tribe had just been removed from their old homes to a new reservation in another Territory, where their affairs were as yet necessarily unsettled and the new life an experiment.

The Iowa Sacs and Foxes, however, had remained upon their new reservation in Kansas for a period of about ten years (a part of them for many years more) prior to their separation from the tribe. In that time they had the opportunity to become accustomed to their surroundings; implements for farming were furnished; annuities regularly paid there, and everything possible done to make them comfortable and for their welfare. But they left their reservation and went to Iowa, for what reason? They say because—

The locality of the said new reservation in Kansas proving to be not so healthful, and becoming for this and other reasons dissatisfied with the change, a portion of the tribe returned to the State of Iowa prior to the year 1855.

Their assertion of the unhealthfulness of the new locality has been shown to be a fallacy. Capt. John Beach, their agent, prior and subsequent to their removal in 1845, gives very positive and decided testimony on this point, as has been shown in the "Statement of account."

That the aforesaid policy of the Government was wise can not be doubted. Had all the dissatisfied and disgruntled bands of Indians been permitted to separate from their tribes at will and allowed to set up separate establishments, the Government would have been put to much additional trouble in caring for them, and enormous additional expenditures would have been involved. Upwards of \$40,000 have been thus expended by the Government in the past twenty-nine years in maintaining a separate establishment for the Sacs and Foxes in Iowa alone.

Misapplication is alleged of article 7 of the treaty of 1859 to the case of the Sacs and Foxes of Iowa, as quoted in the "Statement of account." You say:

No annuities for the tribe were created by that treaty. No claim is based upon that treaty, near or remote, and it has no bearing upon the annuities of the tribe.

It is true that no annuities were created by that treaty; but it is also true that article 6 of the same treaty gives the President of the United States, with the consent of Congress, jurisdiction over any of the provisions of former treaties, to "whatever extent he may judge to be necessary and expedient for their welfare and best interest." To that extent article 7 has application to the Iowa branch.

But application of the aforesaid article in the "Statement of account" was made with especial reference to those of the Iowa branch who left their reservation in Kansas in 1862 and later years, and who were parties to the treaty of 1859.

It is not doubted, however, if there had been any specific benefits, remote or near, accruing to the tribe under the said treaty, and if the proceeds of the surplus lands sold under the fourth article had realized a sum over and above the amount of the tribal debts, provided by the fifth article to be paid from such proceeds, that the memorialists would have claimed their share thereof.

Objection is made also to the deduction of the sum of \$7,600.40 from the finding on their third claim, on account of excessive payments to the memorialists in the fiscal years 1885 and 1886.

In support of this objection you say:

We protest against any such deduction. We contend that the claimants did not receive their pro rata share of the annuities between the years from 1867 to 1894, or to date, inclusive. If, as is held, "this matter was properly disposed of by Secretary Lamar," and that it consequently can not be reopened for readjustment for the benefit of the Sac and Fox Indians of Iowa, it should not be disturbed for the benefit of the Sac and Fox Indians of Oklahoma. If it is a settled account as to *one*, it should be and remain a settled account to *all*. If it should be reopened for a fair, equitable, and just adjustment of the item annually expended for physician and medicine alone for the Oklahoma Sacs and Foxes, a large balance would be found in favor of the Sacs and Foxes of Iowa.

In his letter of March 27, 1886, submitting the questions upon which Secretary Lamar made the rulings set out in his letter of June 1, 1886, the Commissioner of Indian Affairs requested instructions as to the action he should take with respect to future distribution of annuities between the two branches of the tribe—whether the \$5,000 for the support of government, the \$5,000 for support of schools, and the \$1,500 for physician and medicine should be deducted before calculation was made of the proportion due to each of the said branches, stating that such information was necessary to enable his office to make proper distribution of the fund appropriated or about to be appropriated for the ensuing fiscal year, "or whether the whole amount should be divided as has been the practice for the last two years, and require the Indians in the Indian Territory to pay the expenses of their school, national government, and physician out of the sum of \$25,200, their present quota of the annual appropriation for said Indians."

The question of the action of the Indian Office in withholding in the two preceding fiscal years annuities due the Oklahoma branch under treaty provisions was not submitted by the Commissioner in his letter of March 27, except incidentally, as stated, and was not passed upon by the Secretary of the Interior in his letter of June 1.

It is manifest, therefore, that sums due them under the solemn obligations of treaties, and to which they were justly entitled, were with-

held from the Oklahoma branch, and that the Iowa branch, having no claim thereto, were the beneficiaries of these sums.

The question of the restitution of these sums has never before been passed upon by the Department. It is not questioned that if the matter had been submitted for decision the Department would promptly have directed an adjustment thereof between the two branches of the tribe.

Nor is it doubted that the Department has full jurisdiction in the matter, under the act of March 2, 1895, directing the examination of the claim of the Sacs and Foxes of Iowa for their share of the tribal annuities, etc.

The findings set out in the aforesaid "Statement of account" are hereby affirmed.

Very respectfully,

HOKE SMITH,
Secretary.

J. M. VALE, Esq.,
Atlantic Building, City.

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